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FCC MAIL SECTION

P. O. Box 616
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MAR 26 9 02 AM '91 March 25, 1991
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Federal Communications Commission
Office of the Secretary

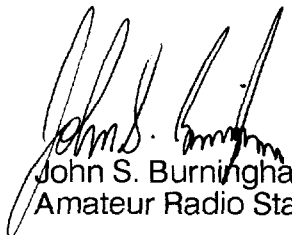
Secretary
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

Dear Sirs:

Please find enclosed my comments to RM-7649 for amendment of Part 97 of the Commission's Rules, Amateur Radio Service.

I have enclosed five (5) copies of my reply for your reference and distribution.

Sincerely,


John S. Burningham
Amateur Radio Station WB8PUF

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FCC MAIL SECTION

ORIGINAL
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MAR 26 9 02 AM '91

In the Matter of

Amendment of the Commission's
Rules to State that Amateur
Stations under Automatic
Control are not Responsible
for Message Content.

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RM-7649 ✓

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MAR 26 1991

Federal Communications Commission
Office of the Secretary

Submitted: March 25, 1991

By: John S. Burningham, WB8PUF
P. O. Box 616
Mahopac, NY 10541-0616

The purpose of RM-7649 is to place primary responsibility for the retransmission of prohibited communications through a repeater with the originator of the prohibited transmission. In my comments I wish to expand the author's proposed rule changes and make the responsibility of the editorial content of all Amateur Radio Communications be placed primarily upon the control operator of the originating station.

With the technological advances of repeaters and data communication networks in the Amateur Radio Service, it has become impractical and technically impossible for a station licensee or control operator to verify the content of communications for possible rule violations of 97.113 (Prohibited transmissions). The responsibility for the

content of communications should be with the originating station, and

Part 97.1 provides the basis for the existence of the Amateur Radio Service: 97.1(a), *providing emergency communications*; 97.1(b), *advancement of the radio art*; 97.1(c), *rules which provide for advancing skills in both the communication and technical phase of the art*; 97.1(d), *reservoir of trained operators, technicians, and electronic experts*; and 97.1(e), *international goodwill*. The proposed rule changes are within the scope of the purpose of the Amateur Radio Service as specified in 97.1(a-d); 97.1(e) is not applicable to this proposed rule change. 97.1(c) is specifically a mandate for rule changes which will advance the communication and technical phases of the art; these proposed changes are in support of the continued development of new technologies, and the development of communication and technical expertise of the licensed amateur radio operators.

It must be remembered that amateur radio operators are in the hobby not for profit or commercial gain, but as a way to expand their ability and for assisting in emergencies as communicators. While the expansion of a licensee's technical ability and technological developments are often transferred to their income producing activities and therefore the American economy, this transference of ability and technology is not against the essence and rules of the Commission; but in fact specified in 97.1(b) and 97.1(d). The transfer of this technological knowledge and development is of importance to our nation for maintaining our industrial position in the community of nations.

The essence of this proposed rule change is to place responsibility for the content of transmissions with the originating station and not with the licensees or control operators of relaying stations. To do otherwise will drastically impede the further development of technologies, communication facilities and have a negative affect on existing developments in communication technology in the Amateur Radio Service. The existing responsibility for content of communications is shared equally between the station originating the prohibited transmission and any and all stations relaying the prohibited transmission.

The negative effect of not adopting the essence of this proposal is to force amateurs that are providing the data communication networks and repeaters to retreat from their development of communication systems. Without operational repeater and packet systems, the ability of amateur radio operators to provide local, regional, and national emergency communications will be impeded. Additionally, the loss of future technological developments in the communication and radio arts could negatively effect our nation's dominate position in science and technology.

Repeaters by their design and use, make prior restraint impossible for a station licensee or control operator of the repeater. It is impossible to know the content of a transmission until after it is transmitted; by existing rules, the station licensee would already be in violation of the rules before it is humanly possible to know the rules were being violated. Digital packet amateur radio communications over

existing networks is so voluminous that for each station licensee or control operator to review the content of all messages traveling over their portion of the network is impractical and impossible for any communication service.

Failure to implement these proposed changes can also have a negative impact on Amateur's freedom of speech and national and international good will. How is the licensee or control operator of a repeater or digital packet station suppose to handle communications through their station that are in a foreign language? Do licensees and control operators instruct users that only ENGLISH is allowed, and do Hispanic licensees and control operators who have a minimal understanding of English allow only SPANISH; so that they can monitor the editorial content of the communications for compliance with 97.113. What about stations located near our international borders with Canada (specifically their French speaking providence), and Mexico (which is Spanish speaking); do we offend our international friends, will they then not allow us to use English!

We are a nation with a basic principle of *Freedom of Speech*. While this does not give an individual the Constitutional right to yell FIRE in a crowded movie theater when there is no fire; that individual is held legally responsible for his or her actions, not the ticket taker that admitted the person. The Commission's Rules as currently written place responsibility on an individual that can unknowingly violate the Rules (97.113) because of the technological developments that make *Prior Restraint* impossible and/or impractical for a hobby radio service.

The burden of legal responsibility and possible monetary forfeiture for content of communications must be placed on the shoulders of the originating station's control operator, the only point in the chain of a communication where a licensed amateur radio can realistically be expected to exercise good judgment and compliance with the FCC Rules as related to content of the communication. It is impossible for the station licensee or control operator of a repeater to know the content of a communication prior to its transmission if they are not the originating station. In the packet networks that exist today, thousands of messages are routed over the network by computer, being repeated by network nodes along the route, it is beyond the scope of the voluntary station licensees and control operators to monitor all traffic prior to transmission; requiring such is not realistic in today's technology.

These proposed changes to Part 97 will facilitate a continuing development of new technology and operating practices, while updating the rules to reflect the changes that have taken place in the art. Progress is important not only in technology, but in the rules and regulations that govern our conduct in the application of the technology.

I propose the following rule changes to Part 97; if accepted, the author's proposed 97.205(g) is not needed as a specific case (for repeater only) as my proposed changes would include the essence of their proposed change:

Change 97.103(a):

Existing wording:

The station licensee is responsible for the proper operation of the station in accordance with FCC Rules. When the control operator is a different amateur operator than the station licensee, both persons are equally responsible for the proper operation of the station.

Proposed wording:

The station licensee is responsible for the proper technical operation of the station in accordance with FCC Rules; this includes all FCC Rules except 97.111 and 97.113. When the control operator is a different amateur operator than the station licensee, both persons are equally responsible for the proper technical operation of the station.

Change 97.105

Existing wording:

97.105 Control operator duties.

(a) The control operator must ensure the immediate proper operation of the station, regardless of the type of control.

(b) A station may only be operated in the manner and to the extent permitted by the privileges authorized for the class of operator license held by the control operator.

Proposed wording:

97.105 Control operator duties and responsibilities.

(a) The control operator must ensure the immediate proper technical operation of the station, regardless of the type of control.

(b) A station may only be operated in the manner and to the extent permitted by the privileges authorized for the class of operator license held by the control operator.

(c) The control operator is responsible for the content of all transmissions originating at a station as defined in 97.111 and 97.113. The control operator of an auxiliary, repeater, space station, or station transmitting RTTY or data emission codes which is retransmitting or relaying communications originating from other stations is not to knowingly allow the station to transmit communications that are in violation of 97.111 or 97.113.

Change 97.113(a):

Existing wording:

No amateur station shall transmit any communication the purpose of which is to facilitate the business or commercial affairs of any party.

Proposed wording:

No amateur station shall knowingly transmit any communication the purpose of which is to facilitate the business or commercial affairs of any party.

Add 97.113(g):

Proposed wording:

Station licensee and control operators of auxiliary, repeater, space station, and digital packet stations, retransmitting the radio signals or digital messages of other amateur station shall not knowingly allow the transmission of communications that are in violation of 97.113.